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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

RAYMOND BALL, an individual, and JOSEPH  
TOTH, an individual,

Plaintiffs,

v.

MATTHEW CARSON, an individual,  
WILLIAM CARSON, an individual,  
TERRANCE THURBER, an individual,  
THOMAS THURBER, an individual, DG  
ROLLINS MINING, LLC, a Wyoming limited  
liability company, COLUMBIA GORGE DATA  
CENTER, LLC, a Nevada limited liability  
company, WHC & SWC INVESTMENTS, LTD,  
a Texas limited partnership, INTELLIGENT  
INVESTMENTS, LLC, a Texas limited liability  
company, and SNICKERS #1, LLC, a Texas  
limited liability company,

Defendants.

Case No. 3:19-cv-00242-HZ

**Reply in Support of Motion to Extend  
Discovery Deadlines**

Plaintiffs submit this reply to briefly respond to defendants' contentions in their  
Opposition to Plaintiffs' Motion to Extend Discovery Deadlines. This Reply is supported by the  
Supplemental Declaration of Counsel.

Plaintiffs have shown good cause for why the discovery deadlines should be extended by  
60 days in this case under F.R.C.P. 16(b) and LR 16-3(1). The unprecedented situation with the

coronavirus makes conducting depositions practically impossible in this case, where plaintiffs reside in Canada, plaintiffs' lead trial counsel is in Colorado, and plaintiffs' local counsel and defendants and their counsel are in Oregon. Supp. Dec. Counsel, ¶ 2. Oregon presently has a "shelter in place" policy in effect, and with the current situation changing by the day, plaintiffs and their counsel do not feel it would be prudent to travel at this time. *Id.* Further, with the extensive and detailed record in this case, it would not be effective in this case to conduct depositions electronically at this time. *Id.*

As discussed in plaintiffs' motion, plaintiffs have shown effective use of prior time under LR 16-3(2).<sup>1</sup> Much of the delay in this case to initiating discovery was caused by defendants' request for a detailed settlement statement shortly after the Court's Rule 16 conference in mid-September. *Id.* at ¶ 3. Explicit in defendants' request was the notion that a detailed exchange would allow the parties to better understand the other's position while avoiding the costs of discovery and, potentially, resolving the case all together. Acting in good faith, plaintiffs spent the majority of October interviewing witnesses, gathering documents and drafting an extensive position statement and initial settlement offer consistent with defendants' solicitation. *Id.* The parties then spent November and early December 2019 in a series of exchanges that ended with defendants' flatly declaring they would not entertain any settlement whatsoever. *Id.* For purposes of this Motion it is worth noting, during the foregoing exchanges, defendants avoided the "detailed" component of their own proposal, by denying Plaintiffs' allegations without significant exposition or documentary support. In short, defendants manufactured a three-month delay by proposing a settlement discussion they never seriously engaged in.

Contrary to plaintiffs' contention, the Requests for Admission and Interrogatories served on March 13, 2020 do not "all refer to allegations in the Complaint." [Dkt. 34 at 2]. To the contrary, the requests for admission ask defendants to authenticate at least 11 documents

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<sup>1</sup> Contrary to defendants' assertion, this is the first request to extend discovery deadlines by plaintiffs. The Notice of Case Assignment that issued February 19, 2019 contained an initial discovery deadline of June 16, 2019 [Dkt. 2], which was modified at the Rule 16 conference on September 13, 2019. [Dkt. 28].

developed through plaintiffs' informal discovery efforts and the vast majority of plaintiffs' interrogatories ask defendants to clarify facts and specific items of evidence gathered through plaintiffs' informal investigations and third-party witness interviews, a substantial portion of which have occurred since this case was filed. Supp. Dec. Counsel, ¶ 4.

Finally, there is no reason this case still cannot go to trial on November 17, 2020. If defendants seek an extension of the deadline for dispositive motions, plaintiffs do not oppose. *Id.* at ¶ 5.

### **Conclusion**

For the foregoing reasons, the court should grant this motion to extend discovery deadlines 60 days.

DATED: March 26, 2020

COSGRAVE VERGEER KESTER LLP

*s/ Amber A. Beyer*

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### **CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **Reply in Support of Motion to Extend Discovery Deadlines** on the date indicated below by:

- ☐ mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- ☐ hand delivery,
- ☐ facsimile transmission,
- ☐ overnight delivery,
- ☒ electronic filing notification.

If served by facsimile transmission, attached to this certificate is the printed confirmation of receipt of the documents generated by the transmitting machine. I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorneys at the addresses listed below:

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DATED: March 26, 2020

s/ **Amber A. Beyer**  
Amber A. Beyer